

REMARKS

Claims 1-72 are pending in the present application. Applicants affirm that Claims 1-57, 60, 62, 65 and 70 were withdrawn from consideration pursuant to a telephonic response to a Restriction Requirement on June 3, 2008. By virtue of this response, claims 58-62, 65, 66, and 68-70 have been amended. Accordingly, claims 58, 59, 61, 63, 64, 66-69, 71 and 72 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Summary of Examiner Interview

Applicants thank Examiner Witczak for the telephone interview had on September 12, 2008, during which the pending claims and cited references were discussed. In particular, proposed claim amendments were discussed, which were agreed by Examiner Witczak to be patentable over the references currently of record. These proposed claim amendments are reflected in the amendments above.

Claim Rejections under 35 U.S.C. §102(e)

Claims 58, 59, 61, 63, 64, 66-69 and 71

Claims 58, 59, 61, 63, 64, 66-69 and 71 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by US Pat. Pub. No. 2002/0111603 A1 to Cheikh ("Cheikh"). Applicants respectfully disagree with this rejection. Cheikh fails to teach or disclose each and every element of independent claims 58 and 68, from which all remaining rejected claims depend.

Claims 58 and 68 both recite "creating access to the paranasal sinus" with a "loaded conduit" (i.e., a conduit that has already been loaded with one or more biodegradable implants). Cheikh does not teach or suggest such a limitation, and in fact, teaches away from such. Indeed, the Cheikh delivery devices are not used to create access to a paranasal sinus, rather access is created through the use of an additional device or "invasive system." *See, e.g.*, paragraphs [0148]-[0152] and FIGS. 1-10. As described there and throughout, the "invasive system" of Cheikh may be a

trocac containing a perforator mandrel, an endoscope, fibroscope, or catheter. Once access has been created with the invasive system, a delivery device is advanced therethrough.

For at least the reason that Cheikh does not teach or suggest *creating* access to a paranasal sinus with a loaded conduit, the rejections under 35 U.S.C. §102(e) of the currently pending claims cannot stand. Therefore, Applicants respectfully request that the rejection of claims 58, 59, 61, 63, 64, 66-69, and 71 under 35 U.S.C. §102(e) be withdrawn.

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Claim Rejections under 35 U.S.C. §103(a)

Claim 72

Claim 72 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Cheikh in view of US. Pat. Pub. No. 2006/0162722 to Boehm et al. ("Boehm"). In order to establish a *prima facie* case of obviousness, a reference or combination of references must teach or disclose each and every claim limitation of the rejected claims. See MPEP §2143. Cheikh was discussed in detail above with respect to claims 58 and 68 above, where it was established that Cheikh fails to teach or disclose creating access to a paranasal sinus using a loaded conduit. Boehm fails to cure this deficiency. Accordingly, a *prima facie* case of obviousness has not been established, and Applicants respectfully request that the rejection of claim 72 under 35 U.S.C. §103(a) be withdrawn.


CONCLUSION

In view of the above, Applicants submit that each of the presently pending claims is in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 577242000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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